IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16106 of 2005
With
SPECIAL CIVIL APPLICATION No. 16047 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHARMISHTRABEN SURESHBHAI PATEL (HUF PROPERTY) - Petitioner(s)

Versus

STATE OF GUAJRAT THR' JT.SECRETARY (APPEALS) & 4 - Respondent(s)

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Appearance :
MR PJ VYAS for Petitioner(s) : 1,
MR MR MENGADE AND MR PD BHATE ASSISTANT GOVERNMENT PLEADER for Respondent(s) : 1, IN SCA 16047 AND SCA 16047 OF 2005 RESPECTIVELY
NOTICE SERVED for Respondent(s) : 1 - 3.
DELETED for Respondent(s) : 4 - 5.
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 15/09/2005

COMMON **ORAL JUDGMENT**

1. Rule. Shri P.D.Bhate and Shri M.R.Mengade, learned AGPs waive service of rule on behalf of the

respondent No.1 - State Authority and Shri J.M.Patel, learned advocate waives service of Rule on behalf of the rest of the respondents. With the consent of the learned advocates for the parties, both these matters are taken up for final hearing today.

2. In both these Special Civil Applications, the respective petitioners have challenged the legality and validity of the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 9.6.2005 passed in Revision Application No.2 of 1996 as well as the order passed in Suo Motu Revision Application No.3 of 1999 by which the Secretary (Appeals), Revenue Department has quashed and set aside the order passed by the Deputy Collector, Land Reforms (Appeals) dated 18.4.1992 passed in Tenancy Appeal No.181 of 1992.

3. It appears from the record that with regard to the land in question, earlier it was restricted new tenure land and an order came to be passed by the Deputy Collector (Land Reforms – Appeals), Kheda dated 18.4.1992 passed in Tenancy Appeal No.181/ 1992

removing restrictions. It is the case on behalf of the petitioners that the petitioners had purchased the land in question treating it as non restricted land considering the Entry in the record of right by which the entry of new tenure was deleted. It also appears from the record that being aggrieved and dissatisfied with the order passed by the Deputy Collector (land Reforms), Kheda dated 18.4.1992 passed in Tenancy Appeal No.181 of 1992 the original tenant preferred revision application No.2 of 1999 before the State Government i.e. Secretary, Revenue Department (Appeals), State Government. The State Government also taken the order passed by the Deputy Collector (land Reforms), Kheda dated 18.4.92 passed in Tenancy Appeal No.181 of 1992 under suo motu revision and the impugned order came to be passed by quashing and setting aside the order passed by the Deputy Collector (Land Reforms), Kheda dated 18.4.1992 passed in Tenancy Appeal No.181 of 1992. Being aggrieved and dissatisfied with the aforesaid common judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 9-6-2005 passed in aforesaid two

revision applications, the petitioners have preferred the present Special Civil Applications under Articles 226 and 227 of the Constitution of India.

4. Shri P.J.Vyas, learned advocate appearing on behalf of the respective petitioners has vehemently submitted that though the petitioners are purchaser of the land in question which they have purchased on the basis of the order passed by the Deputy Collector (Land Reforms – Appeal), Kheda dated 18.4.1992 passed in Tenancy Appeal No.181 of 1992 treating the same as non restricted land by way of registered sale deed and though the petitioners are very much affected parties, the impugned judgment and order has been passed without giving any opportunity of hearing to the petitioners. It is further submitted that by impugned order of quashing and setting aside the order passed by the Deputy Collector, Land Reforms (Appeals), Kheda dated 18.4.1992 passed in Tenancy Appeal No.181 of 1992, the resultant effect would be that the sale in favour of the petitioners would be invalid and therefore, it is requested to quash and set aside the judgment and order passed by the

revisional authority and to remand the matter to the State Government for deciding the same afresh without giving opportunity to the petitioners as well.

5. Shri J.M.Patel, learned advocate appearing on behalf of the respondent No.2 has vehemently opposed the present Special Civil Applications and has submitted that the order which came to be set aside by the Secretary (Appeals) i.e the order passed by the Deputy Collector, Land Reforms (Appeals), Kheda dated 18.4.92 passed in Tenancy Appeal No.181 of 1992 was without jurisdiction and therefore, it is rightly set aside by the revisional authority and therefore, it is submitted that the judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat, is not required to be interfered with by this Court in exercise of the powers under Articles 226 and 227 of the Constitution of India.

6. Shri P.D.Bhate and Shri M.R.Mengade, learned AGPs appearing on behalf of the State Government have supported the judgment and order passed by the Revisional Authority and have requested to dismiss

the present Special Civil Applications.

7. Heard the learned advocates appearing on behalf of the respective parties.

8. It is not in dispute that so far as the petitioners are concerned, they are purchasers of the lands in question by registered sale deed and they have purchased the land in question on the basis of the entry in the revenue record / record of rights which was made pursuant to the orders passed by the Deputy Collector, Land Reforms (Appeals) dated 18.4.92 passed in Tenancy Appeal No.181 of 1992 by which the entry of new tenure was deleted. In other words, pursuant to the order passed by the Deputy Collector, Land Reforms, Kheda dated 18.4.1992 passed in Tenancy Appeal No.181 of 1992, land in question was to be treated as non restricted land. It is also not in dispute that by virtue of quashing and setting aside the order passed by the Deputy Collector, Land Reforms, Kheda dated 18.4.92 passed in Tenancy Appeal No.181 / 1992 the resultant effect would be that sale in favour of the petitioner might be declared invalid

as it will be treated as land in question as restricted new tenure land. It is also not in dispute that before quashing and setting aside the said order passed by the Deputy Collector, Land Reforms, Kheda dated 18.4.1992 passed in Tenancy Appeal No.181 of 1992, the petitioners are not heard and even the petitioners were not the party to the said proceedings. Under the circumstances, the impugned judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 9.6.05 passed in aforesaid two revision applications by which the order passed by the Deputy Collector, Land Reforms, Kheda are quashed and set aside is in breach of principles of natural justice. Only on that ground alone the impugned order passed by the revisional authority is required to be quashed and set aside and the matter is required to be remanded to the State Government for deciding afresh in accordance with law and on merits after giving an opportunity to the petitioner as well.

9. For the reasons stated hereinabove, the petitions succeed. The judgment and order passed by

the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 9.6.05 passed in Revision Application No.2 of 1996 as well as the Suo Motu Revision Application No.3 of 1999 are hereby quashed and set aside. The matter is remanded to the Secretary (Appeals), Revenue Department, State of Gujarat for deciding afresh in accordance with law and on merits after giving hearing to all the parties / persons inclusive of the petitioners. It is also observed that the petitioner to move an appropriate application before the Secretary (Appeals), Revenue Department for joining them as the party respondent within a period of four weeks from today and on said application being made the Secretary (Appeals), Revenue Department, State of Gujarat is directed to join them as the party respondents. Thereafter, the Secretary (Appeals) is directed to decide and dispose of the aforesaid case afresh as stated hereinabove within three months from the date of receipt of this order.

10. Rule, in each matter, is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R.Shah, J.]

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